

OATHER S. HALL

MARCH 20, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. MILLER of New York, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2524]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2524) for the relief of Oather S. Hall, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Oather S. Hall of Clarksville, Ark., of all liability to pay to the United States the sum of \$1,270.45, and any accrued interest, which represents the unpaid balance of a loan secured by a Farmers' Home Administration mortgage on livestock which was handled by the Farmers' Home Administration in Johnson County, Ark., while he was serving as Farmers' Home Administration county supervisor for that county.

STATEMENT

When Mr. Oather S. Hall became the Farmers' Home Administration supervisor for Johnson County, Ark., in 1948, he was advised that the established procedure for handling Farmers' Home Administration mortgage papers was to have the borrower take the completed mortgage form to the circuit clerk's office for signing, acknowledging, and filing. He expressed his dissatisfaction with this practice, but the county Farmers' Home Administration clerk would not pay \$15 for a notary seal, and the Farmers' Home Administration apparently had no way of furnishing money for such a seal for use in connection with its matters. When Mr. Hall sought to resolve the difficulty by appealing to his field supervisor he was informed that procedures in connection with handling mortgages did not require a clerk to have a notary seal, and that no provision existed for purchasing one. He was

further advised that existing procedures of having the circuit clerk witness the signature and take the acknowledgment of the borrower had been in effect for some time and had been working satisfactorily. He was therefore advised that it was permissible to continue the same mode of procedure.

This was the situation when on February 9, 1951, Mr. Hall approved a loan of \$1,320 to one Estel B. Noyes for the purchase of cattle. Chattel mortgages dated February 9 and 20, 1951, were filed by the circuit clerk, but were not executed by the borrower, or acknowledged by the circuit clerk. Therefore, although the papers were otherwise properly prepared, the loan was not secured by a valid chattel mortgage. This fact came to light when the borrower sold the cattle, and left the State of Arkansas. He was ultimately traced to Alaska, but with the exception of two \$50 payments Noyes made after he was located in Alaska, the loan has remained unpaid.

Mr. Oather S. Hall was charged with the amount of the loss to the Government. The report of the Department of Agriculture, which is appended to this report, indicates that Mr. Hall has discharged his other responsibilities as county supervisor in an efficient manner. The committee is of the opinion that the facts clearly show that Mr. Hall is being penalized because of continuance in a mode of procedure which was being followed when he took over his post, and which was fully understood by his superiors. In fact the record discloses that Mr. Hall registered a protest because he questioned the advisability of the use of that procedure. Yet the ultimate result has been that he has been charged with a loss which occurred when another's conduct demonstrated the inherent defect in the procedure. The committee finds that these circumstances justify Mr. Hall's being relieved of the liability to repay this other man's obligation. Accordingly the committee recommends that the bill be favorably considered.

CLARKSVILLE, ARK., April 9, 1954.

HON. CHAUNCEY W. REED,
*Chairman, House Judiciary Committee,
House Office Building, Washington, D. C.*

DEAR SIR: In regard to the case of Estel B. Noyes, a borrower of the Farmers' Home Administration and the assessment against me by the Administrator of the Farmers' Home Administration, I am submitting the following information for your use.

On coming to the Clarksville office in 1948, I asked the county FHA office clerk, Mrs. Frances P. Kendall, what system was being followed in the preparation, signing, and acknowledging of borrower mortgages. She advised that the practice had always been to prepare mortgages in the FHA office and have the borrower take the mortgage to the circuit clerk's office for signing, acknowledging, and filing. I did not like this practice but she did not feel disposed to pay approximately \$15 for a notary seal. I discussed the matter with the State field representative on his next visit to the county and he stated that present procedures did not require that the clerk have a notary seal and no provision was made for the purchase of one and since the practice had been in effect and working satisfactorily for some time, that it was permissible to continue to use that system, which we did without incident until Mr. Cecil Clinton, newly elected circuit clerk, came into

office on January 1, 1951. The first mortgage which was delivered to him after taking office prompted him to bring the borrower over to the FHA office and ask exactly how the mortgage should be filled in and handled. I took the precaution to give him in detail how it should be handled. He stated that it was clear to him and he would treat them in that manner. On February 9, 1951, the original mortgage was made on an initial loan for Estel B. Noyes, who was a veteran, taking on-the-farm training in the Oark, Ark., school. The school recommended the applicant for the loan. On February 20, 1951, the final mortgage was prepared by the county FHA clerk. The borrower was advised to take the mortgage to the office of the circuit clerk for signing, acknowledging, and filing. The loan was made in the amount of \$1,320, for the purchase of 7 cows and 3 calves, which were bought and placed on the mortgage which was prepared in the FHA office by Mrs. Frances P. Kendall, county office clerk, on the dates specified above.

Some 3 months later, I was advised that borrower Noyes had disposed of a part of his chattels through the Clarksville Livestock Auction. An investigation was made on that same day and the day following and it was found that he had disposed of all chattels and left for Alaska. He was later located in Alaska and sent in 2 \$50 payments on the debt. Later, his whereabouts became unknown and have remained so until about August 1953, when I received his address in Alaska from the county supervisor in Missouri, where the borrower's mother lives. The folder has recently been transferred to the supervisor in Anchorage, Alaska, for locating the borrower. The unpaid balance of the \$1,320 loan is \$1,270.45 principal and \$5.08 interest, figured to September 15, 1953, which is the amount that I have been requested to pay, plus interest from September 15, 1953.

Incidentally, at the time it was discovered that borrower Noyes had not signed his mortgage when he delivered it to the circuit clerk's office, it was found that some thirty-odd others were found to bear no signatures of the borrowers and none were acknowledged. These were corrected at once with the exception of the Estel B. Noyes mortgage, since he had disposed of the chattels and left the State prior to this time. At the time of this discovery, it was discussed with Mr. Clinton, circuit clerk, and he advised that it might be his fault for not obtaining signatures on the mortgages but he did not remember that they were to be signed, since he was new in office.

I am being held for the amount of the loan because present procedures state that I am held responsible for the FHA obtaining a legal mortgage, even though I had no occasion to see the mortgages and was unaware that we had any unsigned mortgages until after the borrower had disposed of his chattels and left the State.

It is a pleasure to supply you with the above information. If further information is desired, please feel free to write me. Any assistance you may be able to secure will be deeply appreciated.

With best wishes,

Sincerely,

OATHER S. HALL,
County Supervisor, FHA.

Subscribed and sworn to before me this 9th day of April 1954.

[SEAL]

AROLINA C. RAUSER.

My commission expires July 8, 1956.

AFFIDAVIT

This is to certify that the method used in many counties in Arkansas for acknowledging the signatures of borrowers on crop and chattel mortgages to the Farmers' Home Administration is for the circuit clerk to acknowledge the signature prior to the filing of the mortgage. This method is used as it is not compulsory for the county office clerk or county supervisor to be a notary public as there is no provision for reimbursement of the clerk or supervisor for this exchange.

The procedure for the circuit clerk to acknowledge the signatures of borrowers on mortgages to the Farmers' Home Administration was used by Mr. Oather S. Hall, county supervisor, Johnson County, Ark., in June 1948, and also before and after that date.

This method was discussed and approved by me as I was field representative in that area at that time as the system was being used there and also in other counties.

EARL F. PETTYJOHN,
Area Supervisor.

STATE OF ARKANSAS,
County of Jackson, ss:

Subscribed and sworn to before me, a notary public duly qualified and acting, within and for the State and county aforesaid, this 24th day of January 1956.

[SEAL]

RUBY RANKIN, *Notary Public.*

My commission expires November 2, 1957.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., January 23, 1956.

Re H. R. 2524.

Hon. THOMAS J. LANE,
*Subcommittee on the Judiciary,
House of Representatives, Washington, D. C.*

DEAR TOM: This letter is to give you some information about H. R. 2524, a bill which I introduced for the relief of Oather S. Hall, county supervisor for the Farmers' Home Administration, Johnson County, Ark.

I think it should be brought out that Mr. Hall still holds the same position that he held when he was notified that he was held liable for payment of the amount in question. He has a daughter in high school and is paying on the home which he has bought. His annual salary is \$5,470, from which he receives \$171.36, after deductions for tax, retirement, etc., twice monthly. As you can see, he is not in a position to pay the amount assessed against him without undue hardship to himself and his family.

Tom, what appeals to me about this particular problem is where equity comes into it. The files show that this boy, when he was transferred to Clarksville, Ark., protested about the method being used in registering mortgages; but his superior officer instructed him to continue the same practice. It seems that that action on his part takes him at least partly from under the complete blame for the loss.

Your friend,

JIM TRIMBLE.

JOHNSON COUNTY CHAMBER OF COMMERCE,
Clarksville, Ark., April 10, 1954.*To Whom It May Concern:*

We are fully aware of the situation in which Mr. Oather S. Hall is situated in regard to the loss in his department. We feel that he is not personally responsible for the loss.

We trust that he may be relieved from the payment of the sum for which he is held responsible.

E. JACK COLEMAN,
Board of Directors,

Johnson County Chamber of Commerce, President 1953.

STATE OF ARKANSAS,
County of Johnson, ss:

Subscribed and sworn to before me this 10th day of April 1954.

[SEAL]

TRUMAN S. JACOBS,
County Clerk.

This statement made in connection with the board's earlier request to the Senators and Congressmen.

JOHNSON COUNTY FARMERS ASSOCIATION,
Clarksville, Ark., April 9, 1954.

Mr. CHAUNCEY W. REED,
Chairman, House Judiciary Committee:

In regard to the account of Mr. Estel B. Noyes which I were a member of the county committee when the loan was made. Due to the oversight of the county clerk, I do not think Mr. Oather Hall should assume the responsibility of this debt. And also be relieved of this obligation.

I trust that you will give this case your best attention.

LOYD A. KING,
Manager, Johnson County Farmers Association.

Subscribed and sworn to before me this 9th day of April 1954.

[SEAL]

AROLINA C. RAUSER.

My commission expires July 8, 1956.

AFFIDAVIT

RE H. R. 7505, OATHER S. HALL, CLARKSVILLE, ARK.

STATE OF ARKANSAS,
County of Johnson, ss:

Robert Hardwicke, of Clarksville, after having first been duly sworn deposes and says as follows:

My name is Robert Hardwicke, I live at Clarksville, Ark. I am of lawful age and have lived here all my life. I was formerly circuit clerk and recorder of Johnson County, Ark., at Clarksville, having served in this office from 1946 to 1949, inclusive. The circuit clerk under the laws of Arkansas is also the recorder of deeds and mortgages

and it is in this office that the laws requires that chattel mortgages shall be filed.

I was such clerk and recorder for Johnson County when Mr. Oather S. Hall assumed his duties as county supervisor of Farmers' Home Administration for Johnson County, in 1948.

As recorder for the county all mortgages taken by this FHA government agency were filed in my office as recorder for the county. Under the laws of Arkansas a circuit clerk is empowered to take acknowledgements to mortgages and other papers, when a loan for FHA was made through Mr. Hall's office the borrower would bring his mortgage to my office to have it recorded and would while there execute it and acknowledge it before me as circuit clerk, I would then fill out the acknowledgment and file the mortgage. I would as clerk make charge of 25 cents for taking the acknowledgment which the borrower would in each instance pay to me along with my fees as recorder.

I was in my opinion never at any time an agent for Mr. Hall, or his office, he gave me no directions at any time nor exercised any control over my recording and acknowledging the mortgages, this was my own act as an elected officer.

Any inference or holding that I as recorder taking an acknowledgment as I was so empowered is not only a wrong conclusion of fact, but also one of law.

When a mortgagor brings a mortgage into my office and executes it in my presence as an officer I took the acknowledgement charged him for it and filed the mortgage.

Dated this 1st day of May 1954.

ROBERT HARDWICKE.

Subscribed and sworn to before me this 1st day of May 1954.

[SEAL]

HAROLD LEWIS, *Notary Public*.

My commission expires February 20, 1958.

AFFIDAVIT

RE H. R. 7505, OATHER S. HALL, CLARKSVILLE, ARK.

STATE OF ARKANSAS,
County of Johnson, ss:

Otis T. Bridges states on oath as follows:

My name is Otis T. Bridges, I am of lawful age and live at Clarks-ville, Ark. In the year 1952, I borrowed from the FHA Farmers' Home Administration through the office of Mr. Oather S. Hall the county supervisor for Johnson County, Ark., and in the years 1953, and 1954 have renewed the loan. Each time I mortgaged my property to secure the loans, and each time the loan was made through Mr. Hall's office a mortgage was prepared in his office given to me with instructions to take it to a notary or person authorized to take acknowledgments and to file it in the office of the circuit clerk and recorder for Johnson County, it was suggested to me by Mr. Hall or someone in his office that the circuit clerk could take acknowledgment to the mortgage and that since I was to take it there to be recorded that I could also acknowledge the mortgage there. Each time I signed it and acknowledged the mortgage before Mr. Cecil Clinton who was

the circuit clerk each year, and each time I paid Mr. Clinton myself for recording the mortgage and also paid him 25 cents for the acknowledgment, Hall did not tell me I had to take the mortgage to Clinton the clerk, that Clinton was his agent, all he did was to say that as a matter of convenience to me I could use Clinton for the acknowledgment since I had to take the mortgage there to file for record anyway.

There was nothing said to me by Hall or any direction or instruction given to me by Hall that in any way indicated to me that Clinton the clerk was an agent for Hall, if that be correct it would seem that any notary public Hall would send me to would also or might be called Hall's agent, if the notary should fail to acknowledge a mortgage.

OTIS T. BRIDGES.

Subscribed and sworn to before me this 1st day of May 1954.

[SEAL]

HAROLD LEWIS,
Notary Public.

My commission expires February 20, 1958.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, April 6, 1954.

HON. CHAUNCEY W. REED,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. REED: This is in reply to your request of January 27, 1954, for information concerning the assessment against Oather S. Hall, county supervisor, Farmers' Home Administration, Clarksville, Ark., for whom H. R. 7507 has been introduced to relieve him of all liability for the loss sustained by the Government in connection with a loan which was not secured by a properly executed mortgage.

Regulations, including detailed procedures, which govern the making and servicing of Farmers' Home Administration loans require that the county supervisor shall see that properly executed security documents are recorded to protect the interest of the Government. These regulations specifically provide that failure to comply with the security requirements will make the supervisor financially liable for losses sustained by the Government as a result of the security deficiencies. As additional protection of the Government's interests, and to further serve notice of his accountability, the supervisor is covered by a faithful performance bond.

Mr. Hall approved a loan of \$1,320 to Estel B. Noyes on February 9, 1951, for the purchase of cattle. Chattel mortgages dated February 9 and 20, 1951, filed by the circuit clerk were not executed by the borrower or acknowledged by the circuit clerk, and were, therefore not enforceable. This was the result of a practice the county office had followed of giving the borrower the mortgage forms to take to the circuit clerk's office for execution, acknowledgment, and filing, a practice which had apparently worked successfully until a new circuit clerk took office in January 1951. At that time Mr. Hall took the ordinary precaution of explaining the handling of mortgages to the new circuit clerk, and in servicing the Noyes loan he had the mortgage forms prepared promptly. However, the borrower had disposed of his chattels and left the State when it was discovered that the mort-

gages were not properly executed. Subsequent efforts to collect from the borrower have been unsuccessful. In the absence of a legal mortgage, recourse against the purchasers of the cattle was not possible.

Inasmuch as Mr. Hall failed to discharge his responsibility for seeing that an enforceable mortgage was obtained, and since collection of the indebtedness could not be effected otherwise, there was no alternative for recovery except to charge Mr. Hall the amount of the loss to the Government. As of February 4, 1954, the total liability against Mr. Hall was \$1,270.45 principal and \$34.51 interest, which was accrued at the rate of 6 percent per annum from August 21, 1953.

At the time Mr. Hall's case was considered by the Department's Office of Personnel from a disciplinary point of view, it was decided to limit his penalty to a letter of caution. This decision was arrived at after taking into consideration the fact that he was, through fiscal procedures, to be assessed the \$1,270.45 loss, plus interest, which had occurred due to his actions.

While Mr. Hall appears to have discharged his other responsibilities as county supervisor in an efficient manner, his failure to obtain an enforceable mortgage has resulted in a loss to the Government. The determination of fiscal liability against Mr. Hall was based on his failure to follow certain rules and regulations which were specifically prescribed in order to properly protect the interests of the Government. No additional facts have been presented which would alter the original position of the Department.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

TRUE D. MORSE, *Acting Secretary.*

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